



AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommend Approval of a Highway Authority Agreement with Oie Properties

Presenter: John Lamb

Please check appropriate box:

Government Operations

X

Government Services 11.28.11

Planning & Development

City Council

Public Hearing

Estimated Cost:

NA

Budgeted:

YES

NO

If NO, please explain how item will be funded:

Executive Summary:

Oie Properties (Fox Valley Cleaners) was located at 214 South First Street prior to the First Street development project. In 2007 the owner discovered groundwater contamination at the site and into the right-of-way related to operation of his business. The City in December of 2007 entered into an agreement with Oie Properties for remedial action and enactment of a Groundwater Use Ordinance.

The owner of the property has paid for corrective action and remediation of the site and right-of-way. There is still a level of contamination that is allowed by IEPA provided a Highway Authority Agreement is executed which limits activity at the site.

The Highway Authority Agreement agrees to limit access and activities within the right-of-way and requires permits for any work. This is to protect human health, the environment, worker safety and restrict use of any soil excavated from the right-of-way.

The Agreement is submitted to the IEPA for review and to obtain a no further remediation letter for the property owner.

Attachments: *(please list)*

Highway Authority Agreement

Recommendation / Suggested Action *(briefly explain):*

Staff recommends approval of resolution authorizing the Mayor and City Clerk to execute Highway Authority Agreement with Oie Properties.

For office use only:

Agenda Item Number: 3.d

City of St. Charles, Illinois
Resolution No. _____

**A Resolution Authorizing the Mayor and City Clerk of the City of
St. Charles to Execute a Highway Authority Agreement with Oie
Properties**

**Presented & Passed by the
City Council on _____**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A," by and on behalf of the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois, this day of .

PASSED by the City Council of the City of St. Charles, Illinois, this day of .

APPROVED by the Mayor of the City of St. Charles, Illinois, this day of .

Donald P. DeWitte, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

HIGHWAY AUTHORITY AGREEMENT

This Agreement is entered into this ____ day of _____, 200__ pursuant to 35 Ill. Adm. Code 742.1020 by and between the (1) Oie Properties ("Property Owner") and (2) the City of Saint Charles, IL ("Highway Authority"), collectively known as the "Parties."

WHEREAS, Oie Properties is the owner of the property located at 214 South 1st Street, Saint Charles, IL ("the Site");

WHEREAS, as a result of one or more releases of contaminants at the above referenced Site ("the Release(s)"), soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742;

WHEREAS, the soil and/or groundwater contamination exceeding Tier 1 residential remediation objectives extends or may extend into the Highway Authority's right-of-way;

WHEREAS, the Owner/Operator or Property Owner is conducting corrective action in response to the Release(s);

WHEREAS, the Parties desire to prevent groundwater beneath the Highway Authority's right-of-way that exceeds Tier 1 remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access;

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. Attached as Exhibit A are scaled maps prepared by the Property Owner that show the Site and surrounding area and delineate the current and estimated future extent of soil and groundwater contamination above the applicable Tier 1 residential remediation objectives as a result of the Release(s).
3. Attached as Exhibit B are tables prepared by the Property Owner that list each contaminant of concern that exceeds its Tier 1 residential remediation objective, its Tier 1 residential remediation objective and its concentrations within the zone where Tier 1 residential remediation objectives are exceeded. The locations of the concentrations listed in Exhibit B are identified on the maps in Exhibit A.

4. Attached as Exhibit C is a scaled map prepared by the Property Owner showing the area of the Highway Authority's right-of-way that is governed by this agreement ("Right-of-Way"). Because Exhibit C is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines.
5. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the Right-of-Way.
6. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier 1 residential remediation objectives.
7. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of-Way exceeding Tier 1 residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-of-Way, and make all existing permits for work in the Right-of-Way, subject to the following or a substantially similar condition:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

1. This agreement shall be referenced in the Agency's no further remediation determination issued for the Release(s).
2. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this agreement as if the transferee were an original party to this agreement. The transferee's agreement to be bound by the terms of this agreement shall be memorialized at the

time of transfer in a writing ("Rider") that references this Highway Authority Agreement and is signed by the Highway Authority, or subsequent transferor, and the transferee.

3. This agreement shall become effective on the date the Agency issues a no further remediation determination for the Release(s). It shall remain effective until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for this agreement, or until the agreement is otherwise terminated or voided.
4. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this agreement or may, in its sole discretion, declare this agreement null and void if any of the Parties or any transferee violates any term of this agreement. The Parties or transferee shall be notified in writing of any such declaration.
5. This agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the agreement.
6. This agreement supersedes any prior written or oral agreements or understandings between the Parties on the subject matter addressed herein. It may be altered, modified or amended only upon the written consent and agreement of the Parties.
7. Any notices or other correspondence regarding this agreement shall be sent to the Parties at following addresses:

Manager, Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62974-9276

Oie Properties
41 Whittington Course
St. Charles, IL 60174

John Lamb, Environmental Services Manager
City of St. Charles
2 East Main Street
St. Charles, IL 60174

IN WITNESS WHEREOF, the Parties have caused this agreement to be signed by their duly authorized representatives.

Date: _____

City of Saint Charles, Illinois

By: _____

Its: _____

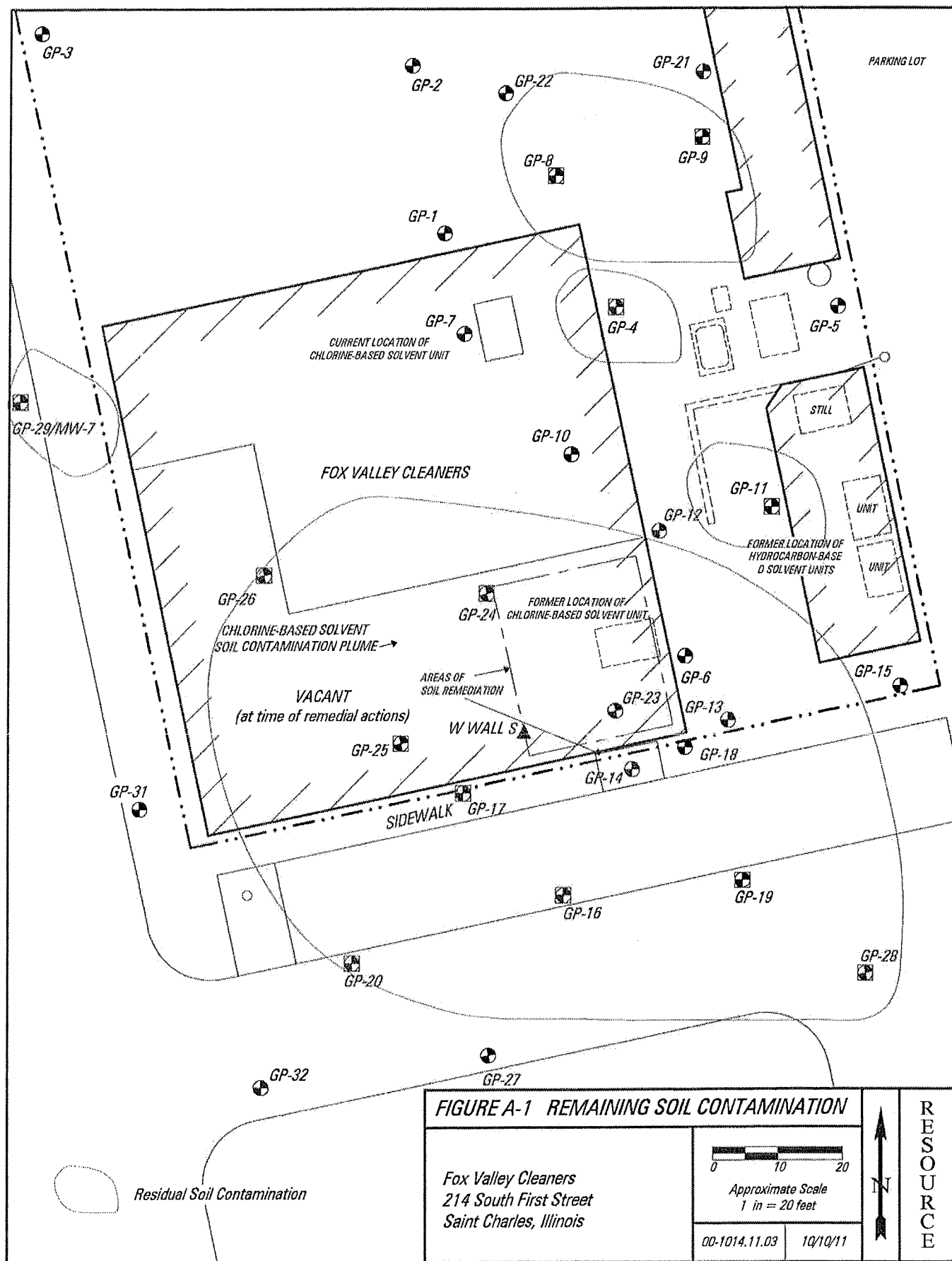
Date: 10/7/11

Oie Properties

By:  _____
Title: PARTNER

EXHIBIT A

Project Maps





RESOURCE	
EXHIBIT A-3 ESTIMATED FUTURE EXTENT OF GROUNDWATER TIER 1 EXCEEDENCES Fox Valley Cleaners 214 South First Street Saint Charles, Illinois	
	<p>Scale: 1 inch = 400 feet</p>
	00-1014.11.05

ESTIMATED REGION
OF FUTURE GROUNDWATER
CONTAMINATION



EXHIBIT B

Data Tables

Exhibit B - Table I

Laboratory Analytical Summary - Groundwater Quality

Volatile Organic Compounds and Polynuclear Aromatic Hydrocarbons in Groundwater Samples

Sampling Date: December 19-20, 2007

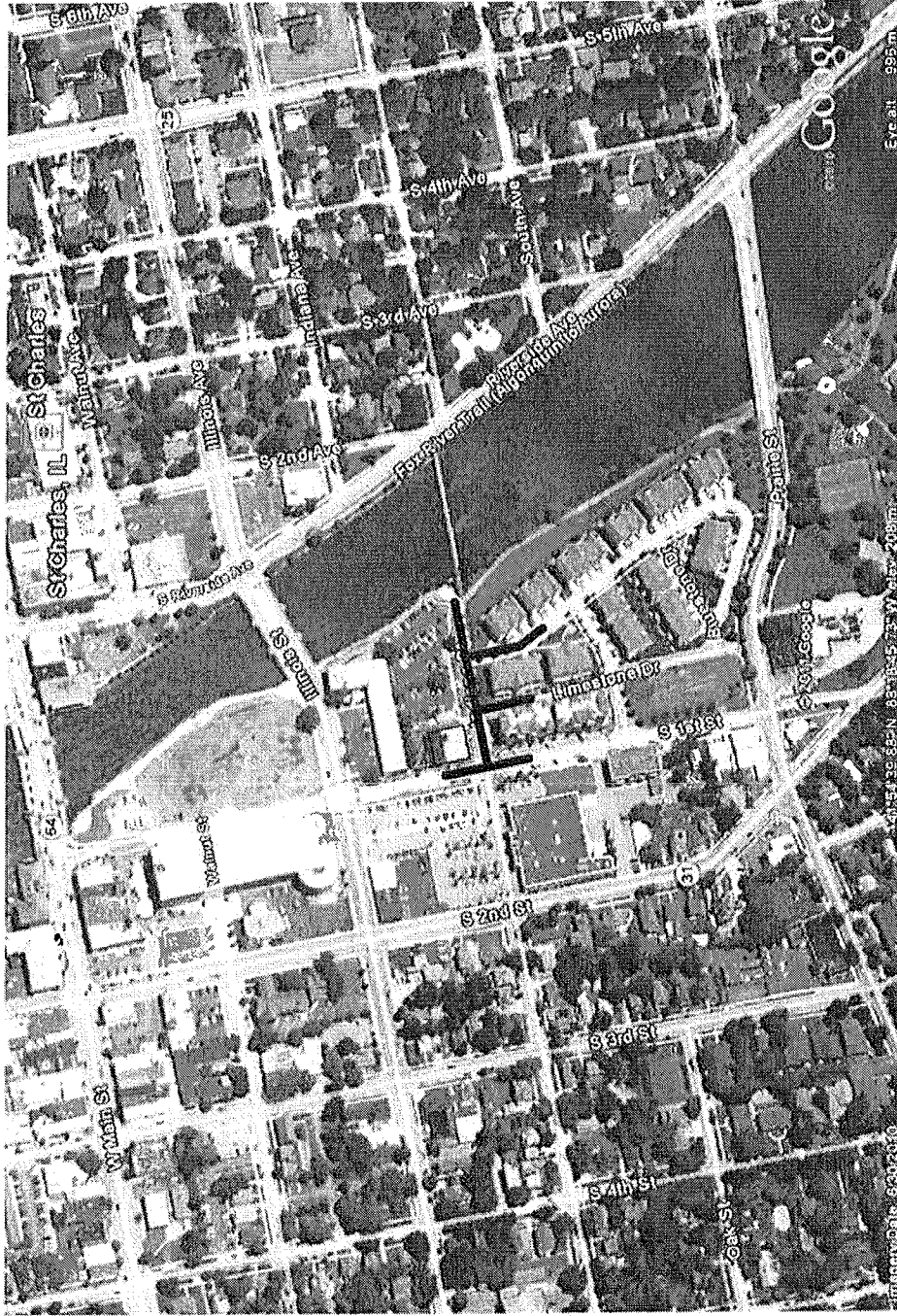
Values in mg/L

[illegible]

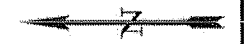
Exhibit B - Table II Analytical Summary—Soil Quality Volatile Organic Compounds in Soil Samples (values in mg/kg)																						
Contaminant	W Wall S	GP-4 7-8'	GP-8 6-7'	GP-9 3-4'	GP-11 6-7'	GP-16 6-7'	GP-17 7.5- 8.5'	GP-17 7.5- 8.5'	GP-18 4-6'	GP-18 6-7'	GP-19 6-6.5'	GP-20 6-7'	GP-24 4-5.5'	GP-25 5.5-7'	GP-26 5.5-7'	GP-28 4-5.5'	GP-29 6-7'	Illinois EPA Remediation Objectives				
																		Ingestion	Inhalation	Groundwater Ingestion		
Benzene	NIF	<0.100	0.187	0.088	0.16	<0.005	<0.005	<0.100	<0.005	0.468	0.005	<0.005	0.38	<0.005	<0.005	<0.005	<0.005	<0.005	12	0.8	0.03	
Cis-1,2-Dichloroethene	NIF	3.51	<0.10	0.0117	0.323	0.0648	0.0077	0.134	<0.005	0.468	0.005	<0.005	0.38	<0.005	0.152	<0.005	<0.005	<0.005	780	1,200	0.4	
Tetrachloroethene	12.300	0.623	<0.10	<0.005	<0.005	1.90	0.834	6.50	0.455	0.0857	0.197	0.0862	4.52	0.455	2.93	1.22	0.0784	12	11		0.06	
Trichloroethene	0.0051	0.374	<0.10	<0.005	<0.005	0.038	0.0066	0.0398	0.0056	0.0107	0.0066	<0.005	0.0645	0.0056	0.0466	<0.005	<0.005	58	5		0.06	
Vinyl Chloride	NIF	0.143	<0.10	0.0164	0.143	<0.010	<0.010	<0.010	<0.010	0.088	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	0.46	0.28		0.01
NOTE	Only contaminants detected in full VOC/SVOC analytical scan are listed; all others not present at Method Detection Limits																					
TEXT	Background contamination increased detection limit above remediation objective																					
NIF	Not Tested For																					
TEXT	Remediation objective exceeded by contaminant concentration or detection limit																					
TEXT	Detected concentration exceeds remediation objective																					

EXHIBIT C

Right-of-Way Map



RESOURCE



Scale: 1 inch = 400 feet

00-1014.11.A3

EXHIBIT C HIGHWAY AUTHORITY RIGHT OF WAY

Fox Valley Cleaners
214 South First Street
Saint Charles, Illinois



Highway Authority Agreement Location